



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2017-0469; FRL-10000-04-Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules, R307-300 Series; Area Source Rule for Attainment of Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of rule revisions submitted by the State of Utah on May 9, 2013, and August 25, 2017, to Utah's R307-309 fugitive dust control rule. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: This final rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2017-0469. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air and Radiation Division, Environmental Protection Agency (EPA), Region 8, Mailcode 8ARD-QP, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6602, ostigaard.crystal@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2017 (82 FR 43205), the EPA proposed to approve revisions to Utah administrative rule R307-309 (fugitive dust control rule) submitted on May 9, 2013, and August 25, 2017, and proposed to approve Utah's December 16, 2014 submittal determining that R307-309 provides for the implementation of reasonably available control measure (RACM) in Utah's fine particulate matter (PM_{2.5}) Moderate area state implementation plan (SIP). Before finalizing this action, however, the EPA determined that the Salt Lake City (signed on September 16, 2019), Provo (84 FR 14267), and Logan (83 FR 52983) PM_{2.5} nonattainment areas attained the PM_{2.5} NAAQS. These clean data determinations suspend Utah's obligation to submit certain nonattainment area planning requirements, including RACM; thus, we are not finalizing action on Utah's December 16, 2014 submittal at this time. Nonetheless, the rule revisions to R307-309 submitted on May 9, 2013, and August 25, 2017, are approved into the SIP on the basis that R307-309, "Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust," strengthens the existing Utah SIP.

II. Response to Comments

Our September 14, 2017 (82 FR 43205), proposed rulemaking provided a 30-day public comment period. The EPA received a total of three public comments on the proposed action. The first comment was anonymous, the second comment was from a named individual, and the third

comment was from Western Resource Advocates. Our Response to Comments document in the docket for this action contains a summary of the comments and the EPA's responses. The full text of the public comments, as well as all other documents relevant to this action, are available in the docket (EPA-R08-OAR-2017-0469).

III. Final Action

No comments were submitted that changed our assessment that the submitted rule revisions comply with the relevant CAA requirements. For the reasons stated in our proposed rule, final rule, and the Response to Comments document (EPA-R08-OAR-2017-0469), the EPA is finalizing approval of the revisions submitted by Utah on May 9, 2013, and August 25, 2017, pursuant to section 110 of the CAA, as the rule revisions will strengthen the Utah SIP by providing additional PM reductions. The EPA is not taking final action on Utah's December 16, 2014 submission that R307-309 constitutes RACM at this time.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Utah Division of Administrative Rules described in the amendments set forth to 40 CFR part 52 below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under

sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

¹ 62 FR 27968 (May 22, 1997).

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

Dated: September 20, 2019.

Gregory Sopkin,
Regional Administrator,
Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT – Utah

2. In § 52.2320(c), the table is amended by adding the centered heading “R307-309.

Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust” and entry “R307-309” in numerical order to read as follows:

§52.2320 Identification of plan.

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(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
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R307-309. Nonattainment and Maintenance Areas for PM₁₀ and PM_{2.5}: Fugitive Emissions and Fugitive Dust				
R307-309	Nonattainment and Maintenance Areas for PM ₁₀ and PM _{2.5} : Fugitive Emissions and Fugitive Dust	8/4/2017	[Insert Federal Register citation], [Insert date of publication in the Federal Register]	
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